

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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| IN RE: NEW ENGLAND) | MDL No. 2419 |
| COMPOUNDING PHARMACY, INC.) | No. 1:13-md-02419-RWZ |
| PRODUCTS LIABILITY LITIGATION) | |
|) | |
| THIS DOCUMENT RELATES TO:) | |
| ALL ACTIONS) | |
|) | |

**STATEMENT OF THE U.S. FOOD AND DRUG ADMINISTRATION ON THE
EFFECT OF CHOICE OF LAW ON THE NEED FOR DISCOVERY UNDER THE
THIRD-PARTY SUBPOENA OF TENNESSEE CLINC DEFENDANTS DATED MARCH
5, 2015, AND ON THE ASSOCIATED MOTION FOR PROTECTIVE ORDER**

By their answers in this litigation, Tennessee Clinic Defendants “assert comparative fault” against the U.S. Food and Drug Administration (FDA) and its personnel. ECF No. 1455 at 79 ¶ 36; ECF No. 1456 at 77 ¶ 36. By third-party subpoena dated March 5, 2015 (Subpoena), Tennessee Clinic Defendants direct FDA to produce six categories of documents and to produce one or more witnesses for deposition pursuant to Fed. R. Civ. P. 30(b)(6). ECF No. 1775-2 at 6-16. By motion dated May 11, 2015, FDA asks this Court to issue a protective order providing that it shall not be required to produce any witness for deposition under the Subpoena until 30 days after the completion of the trial in *United States v. Cadden*, No. 1:14-cr-10363-RGS (D. Mass.), or the entry of guilty pleas by all defendants in that action. ECF No. 1838 at 1.

By memorandum dated June 5, 2015, Tennessee Clinic Defendants effectively concede that they will have little need for discovery under the Subpoena if the law held applicable to plaintiffs’ claims against them does not recognize comparative fault as a defense. They thus give the following as the sole example of information they allegedly will need from FDA, “[n]o matter what law applies”: “[W]hat the FDA * * * would have provided to these Defendants in 2011-12 had they requested information about NECC.” ECF No. 1942 at 3, 4. FDA can provide

that information to Tennessee Clinic Defendants without the disruptive depositions that the Subpoena seeks. FDA asks the Court be cognizant of that fact in considering FDA's motion for protective order.

Respectfully Submitted,

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Dated: June 9, 2015

CERTIFICATE OF SERVICE

I hereby certify that on June 9, 2015, I served the within statement on all counsel of record by filing it with the Court by means of its ECF system.

s/ David M. Glass